nature of the right conferred by a power of attorney. It has been argued that the power to sue or to transfer title is a legal right, distinct from the ownership of the chose in action or the title, and that, as this right may be transferred at pleasure, its purchaser should be allowed to use it, and acquire rights under it, just as a *bona fide* purchaser of a legal title is absolutely entitled to the free use of his property. 1 HARVARD LAW REVIEW, 6, 7.

This view is clearly correct in regarding the power of attorney as conferring a legal right, for it is a right recognized at law, and protected in equity only to the same extent as other legal rights. However, the extent of the right seems to be misconceived. The legal rights to bring suit or to transfer title are not severable from the ownership of the chose in action, or the title, nor can they be created in others by the owners of such property. They appear to be merely necessary legal incidents dependent on such ownership, and the grant of a power of an attorney effects, not a grant of them, but merely the grant of a legal right to represent the owner in using them. This right originated in the old law courts, where it was found that a suitor, through absence or ignorance, often needed some one to represent him. The method was suggested by the king's manner of doing business, which he was himself unable to perform. Pollock & Maitland's History Eng. Law, 2d ed. ii. 227. But this legal power to represent another, which became greatly extended in scope, and was made irrevocable under certain circumstances, was always a mere power to take the grantor's place to a limited extent, subject of course to all incident obligations, legal and equitable. If the above be a correct analysis, the court of equity, without interfering in the least with the legal right conferred on the grantee of a power of attorney to represent his grantor, may hold such grantee subject to equities existing against his grantor. The decision in the principal case is then right, and similar results should be reached in the other cases mentioned. Business usage pleads strongly for a different result, and the consequent right to assign choses in action more freely, but the recognition of a greater power conferred by the power of attorney than the right to represent would be too serious a violation of principle for the courts to adopt without legislative authority.

THE RIGHT TO PRIVACY. — There has existed no explicit authority for the right to privacy since the final decision in *Schuyler* v. *Curtis*, 147 N. Y. 434. That decision, it is true, was rested on grounds which did not affect the main question, but other recent authorities have denied the existence of any such right. 13 HARV. LAW REV. 415. It is, therefore, interesting to find the appellate division of the New York Supreme Court unequivocally affirming its former doctrine in a case not complicated by any possible breach of contract or confidence. The plaintiff, a young woman, asked for damages and for an injunction against the unauthorized use of her portrait by the defendant in advertising its business. A demurrer to her complaint was overruled. *Roberson* v. *Rochester Folding Box Co.*, 64 App. Div. 30.

The court rejects the principle that equity interferes only to protect property rights, and cites the cases of dead bodies. These cases would seem to be amply sufficient to dispose of the objection since, it is ad-

mitted, practically on all hands, that there is no property in dead bodies, and yet equity has frequently enjoined interference with them. 15 HARV. LAW REV. 64; *Pierce* v. *Swan Point Cemetery*, 10 R. I. 227; *Meagher* v. *Driscoll*, 99 Mass. 281.

It therefore seems superfluous for the court to declare further that the plaintiff's right to control the publication of her likeness may, if necessary, be considered as property. Extreme as the views of the court may appear, it is supported by some *dicta*. *Corliss* v. *Walker*, 64 Fed. Rep. 280, 282; Gray, J., dissenting, in *Schuyler* v. *Curtis*, *supra*. Moreover, it is not apparently inconsistent with the numerous cases in which the necessity of property as a basis of jurisdiction has been laid down. The term, property, is nowhere clearly defined, and seems to mean no more than pecuniary interest as distinguished from private feelings. Kerr, Injunctions, p. 498; *Emperor of Austria* v. *Day & Kossuth*, 2 De G., F., & J. 217, 241. Moreover, the "property right" need not be presently profitable; it is enough if it may be so in the future. *Prince Albert* v. *Strange*, 2 De G. & S. 652, 694; *Gee* v. *Pritchard*, 2 Swanst. 402. When the word has been extended thus far it seems quite possible to claim its protection for the right to privacy. Almost any right may become pecuniarily profitable to its possessor. Again, if transferability be considered the essential of property, the right in question, granting its existence, seems in its nature quite as assignable as the right in private letters.

If, however, the *dictum* of the principal case were accepted, it might be argued that a man's property right in his features ought to survive him, and the case of *Schuyler* v. *Curtis*, *supra*, generally regarded as deciding the contrary, would be somewhat weakened. No one denies the desirability of a remedy in this class of cases. If it is to be given without legislation by the courts this should not be done by taking advantage of an elastic phrase, which already means so much that it means nothing.

STATUTORY RIGHTS OF ADVERTISERS. — A recent unreported Massachusetts decision, *Martin* v. *Owens Bros.*, has directed attention to a peculiar section of the trademark statute of this Commonwealth, in which provision is made for the registering of a "form of advertisement." Forms of advertisements have long been protected at common law under the rules of unfair competition, in which fraudulent intent, liability to deceive, and probable damage to the complainant are essential, as well as certain technical requirements by analogy to trademarks; but this statute omits all the foregoing requisites, and purports to afford protection to a bare form of advertisement, as such, without pretence of requiring it to indicate origin, proprietorship, or anything arbitrary or distinctive.

The opinion of the court was rendered by Judge Loring, who, after explaining the nature of the advertising device, a "Lucky Penny Pocket Piece," and pointing out that the defendant had deliberately copied the plaintiff's article to get the benefit of the latter's trade, continued: —

"The plaintiff is trying to get the monopoly of manufacturing and selling, as a piece of merchandise, what is called by the counsel an advertising device, and what, to my mind, would be more accurately described as an article of the nature of a 'throw-in' to attract customers. It is used in the same way that advertisements are used, to a certain extent, but does not advertise the plaintiff's goods, profession, work, or anything of